Supreme Court, U. S.
FILED
MAY 28 1980
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-5962

DANNY VINCENT,

Appellant,

—vs.—

STATE OF TEXAS,

Appellee.

ON APPEAL FROM THE
TEXAS COURT OF CRIMINAL APPEALS

JURISDICTIONAL STATEMENT FILED JANUARY 8, 1980
JURISDICTION POSTPONED APRIL 14, 1980

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RELEVANT DOCKET ENTRIES

5/18/77—Def. does not appear for arrn. S/O to bring him before court on 5/23/77.

5/23/77—Case called. Def., counsel & D.A. ready. Def. pleads guilty. Admonishment given & plea accepted. Evidence heard. Def. found guilty. Punishment assessed at 6 yrs. TDC & $2000 fine. T.D.C. time probated & def. sentenced on fine. Def. waives appeal.

10/3/77—Motion to Revoke and Order for Warrant.

4/10/78—Revocation tried.

4/24/78—Revocation ordered. Def. to be sentenced later.

7/10/78—Def. sentenced to 6 yrs. T.D.C.

7/13/78—Filed Notice of Appeal.

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

INDICTMENT

The Grand Jurors for the County of Ochiltree, State of Texas, duly selected, impaneled, sworn, charged and organized as such at the April Term, A.D. 1977, of the 84th Judicial District Court of said County, upon their oaths present in and to said Court, that Danny Vincent, on or about the 15th day of November, A.D. 1976, and before the presentment of this indictment, in said County and State, did then and there intentionally and knowingly and without the effective consent of Billy Herndon, enter a habitation owned by the said Billy Herndon, and did then and there attempt to commit theft, to-wit: did then and there unlawfully attempt to obtain property from Billy Herndon, the owner thereof, without the effective consent of the said Billy Herndon, and with intent to deprive said owner of said property,

AGAINST THE PEACE AND DIGNITY OF THE STATE.

/s/ Nell May Field
Foreman of the Grand Jury

ORIGINAL

IN THE DISTRICT COURT OF
OCHILTREE COUNTY, TEXAS
84th JUDICIAL DISTRICT

April Term, 1977

May 23, 1977

No. 1494

THE STATE OF TEXAS

vs.

DANNY VINCENT

JUDGMENT

This day this cause was called for trial, and the State appeared by her District Attorney, and the Defendant, Danny Vincent, having heretofore been duly arraigned as required by law, appeared in person and by counsel, the Honorable Danna Kay Archer (and the Defendant, together with his said counsel, having, by written notice filed herein, waived the time allowed by law to prepare for trial), and both parties announced ready for trial, and the said Defendant, in open Court, in person, pleaded guilty to the charge contained in the Indictment. Thereupon the said Defendant was admonished by the Court of the consequences of his said plea, including, in particular, an admonition as to the punishment prescribed by law for the offense with which the said Defendant is charged herein, and the said Defendant persisted in making such plea; and it plainly appearing to the Court that said Defendant is sane, and that he is uninfluenced in making said plea by any consideration of fear or by any persuasion or delusive hope of pardon prompting him to confess his guilt, the said plea of the said Defendant is by the Court received, and here now entered of record upon the Minutes of the Court as the plea herein of said Defendant. And it further appearing to the Court that

before entering said plea, the Defendant has made application in writing to waive the right of trial by jury, which said application in writing, together with the consent and approval of the Attorney representing the State in writing, and signed by the said Attorney representing the State, has been filed in the papers of this cause before the said Defendant entered his said plea, and which said application the Court here now consents to and approves and here now enters of record upon the Minutes of the Court, and the said Defendant has here now in open court, in person, and in writing, waived his right to trial by a jury herein; whereupon, the Court proceeded to hear the case without a jury, and the Court having heard the indictment read, the said Defendant's said plea thereto, and having heard the evidence submitted, finds the said Defendant to be guilty of the offense of Burglary, as charged in the Indictment, and as confessed by him in his plea thereto, and assesses his punishment at a $2,000.00 fine.

It is therefore considered by the Court that the Defendant, Danny Vincent is adjudged to be guilty of the offense of Burglary as found by the Court, and that he be punished as has been determined by the Court by a $2,000.00 fine, and that the State of Texas do have and recover of the said Defendant, all costs in this prosecution expended, for which execution will issue, and that the said Defendant be remanded to jail to await the further order of this Court herein.

/s/ Richard N. Countiss
Judge Presiding

IN THE DISTRICT COURT OF
OCHILTREE COUNTY, TEXAS
84th JUDICIAL DISTRICT

April Term, 1977

May 23, 1977

No. 1494

THE STATE OF TEXAS

vs.

DANNY VINCENT

SENTENCE

This day, this cause being again called, the State appeared by her District Attorney, and the Defendant, Danny Vincent, was brought into open court in person, in charge of the Sheriff, for the purpose of having the sentence of the law pronounced against him in accordance with the Judgment heretofore rendered and entered herein. Thereupon the said Defendant, together with his counsel herein, the Hon. Danna Kay Archer, both being present in person in open court, waived the time allowed by law for making the Motion for New Trial and the Motion in Arrest of Judgment, and requested the Court to pronounce sentence herein immediately. And thereupon the said Defendant was asked by the Court whether he had anything to say why sentence of the law should not be pronounced against him and he answered nothing in bar thereof. Whereupon the Court proceeded, in the presence of said Defendant, his counsel also being present in open court as aforesaid, to pronounce sentence against him as follows:

IT IS THE ORDER OF THE COURT that the said Defendant, who has been adjudged to be Guilty of the offense of Burglary of Habitation and whose punishment

has been adjudged at a $2,000.00 fine, be delivered to the custody of the Probation Office for processing as to his Application for Adult Probation which has been granted this day as to the term of confinement in the Texas Department of Corrections assessed in the Judgment of Probation entered this date and that the defendant be then released upon his own recognizance and upon the terms and conditions of the said Judgment of Probation entered this date.

/s/ Richard N. Countiss
Judge Presiding

IN THE DISTRICT COURT OF
OCHILTREE COUNTY, TEXAS
84th JUDICIAL DISTRICT

No. 1494

THE STATE OF TEXAS

vs.

DANNY VINCENT

APPLICATION FOR ADULT PROBATION

TO THE SAID HONORABLE COURT:

Now comes Danny Vincent, Defendant in the above entitled and numbered cause, wherein he is charged by indictment with the offense of Burglary of Habitation and shows the Court:

(a). That the ends of justice and the best interests of the public as well as the Defendant will be subserved by the Courts granting this Defendant the benefits of the Adult Probation laws of this State.

(b). That, if granted probation, this Defendant will, during the period of probation comply with all of the terms and conditions provided by Article 42.12 of the Code of Criminal Procedure of the State of Texas, and such other and further terms and conditions as the Court may see fit to impose upon him.

WHEREFORE, Defendant prays that upon his conviction herein, and if his punishment does not exceed ten (10) years imprisonment in the penitentiary, that the Court appoint a probation officer, that the imposition and execution of sentence be suspended and that this Defendant be placed on probation for the maximum period of the punishment imposed in accordance with the provisions of the Adult Probation laws of the State of Texas.

/s/ Danny Vincent
Defendant

SWORN TO AND SUBSCRIBED BEFORE ME by the said Danny Vincent on this the 23rd day of May 1977, to certify which witness my hand and seal of office.

IN THE DISTRICT COURT OF
OCHILTREE COUNTY, TEXAS
84TH JUDICIAL DISTRICT

April Term, 1977

Date May 23, 1977

No. 1494

THE STATE OF TEXAS

vs.

DANNY VINCENT

JUDGMENT (PROBATION)

This day this cause was called for trial, and the State appeared by her District Attorney, and the Defendant, Danny Vincent, having heretofore been duly arraigned as required by law, appeared in person and by counsel, the Honorable Danna Kay Archer and (the Defendant, together with his counsel, having, by written notice filed herein, waived the time allowed by law to prepare for trial), both parties announced ready for trial, and the said Defendant, in open Court, in person, pleaded guilty to the charge contained in the Indictment. Thereupon the said Defendant was admonished by the Court of the consequences of his said plea, including, in particular, an admonition as to the punishment prescribed by law for the offense with which the said Defendant is charged herein, and the said Defendant persisted in making such plea; and it plainly appearing to the Court that said Defendant is sane, and that he is uninfluenced in making said plea by any consideration of fear or by any persuasion or delusive hope of pardon prompting him to confess his guilt, the said plea of the said Defendant is by the Court received, and here now entered of record upon the Minutes of the Court as the plea herein of said Defendant. And it further appearing to the Court that before entering said plea, the Defendant has made application in writing to waive the right of trial by jury,

which said application in writing, together with the consent and approval of the Attorney representing the State in writing, and signed by the said Attorney representing the State, has been filed in the papers of this cause before the said Defendant entered his said plea, and which said application the Court here now consents to and approves and here now enters of record upon the Minutes of the Court, and the said Defendant has here now in open court, in person, and in writing, waived his right to trial by a jury herein; whereupon, the Court proceeded to hear the case without a jury, and the Court having heard the indictment read, the said Defendant's said plea thereto, and having heard the evidence submitted, finds the said Defendant to be guilty of the offense of Burglary, as charged in the Indictment, and as confessed by him in his plea thereto, and assesses his punishment at confinement in the penitentiary for 6 (six) years.

It is therefore considered by the Court that the Defendant, Danny Vincent is adjudged to be guilty of the offense of Burglary as found by the Court, and that he be punished as has been determined by the Court, by confinement in the penitentiary for 6 (six) years, and that the State of Texas do have and recover of the said Defendant all costs in this prosecution expended.

And it further appearing to the Court that the said Defendant has made his written and sworn application for Adult Probation, under the terms and provisions of the Adult Probation Laws of the State of Texas, and it appearing by the proof that the said Defendant has not been previously convicted of any felony offense, in this State or in any other State, and it further appearing to the Court that the ends of justice and the best interests of the public, as well as the Defendant, will be subserved, if the imposition of the sentence herein be suspended, and he be placed upon probation, upon the terms and conditions hereinafter set out:

IT IS THEREFORE ACCORDINGLY FURTHER ORDERED, ADJUDGED AND DECREED, on this same day, that the imposition of the sentence herein on the said Defendant be, and it is hereby suspended, and he is hereby placed upon probation, for a period of 6 (six)

years from this date, and upon the following terms and conditions:

(a). That he commit no offense against the laws of this or of any other State or of the United States.

(b). That he avoid injurious or vicious habits.

(c). That he avoid persons or places of disreputable or harmful character.

(d). That he become personally acquainted with the clergyman of some church of his choice and that he attend church services as often as his employment permits.

(e). That he work faithfully at suitable employment as far as possible, and support his dependents.

(f). That he remain within the confines of Ochiltree County, Texas until, and unless, his probation officer shall give him written permission to leave the county temporarily or to reside elsewhere.

(g). That he permit the probation officer to visit him at his home or elsewhere, as said probation officer may desire.

(h). That he refrain absolutely from drinking intoxicants in all forms.

(i). That he pay the costs of court, through the Probation Officer, within 90 (ninety) days after this date.

(j). That he pay a regular probation fee of $10.00 per month, through the Probation Officer, for the use and benefit of this county, beginning the 1st day of June 1977.

(k). The court hereby appoints and designates H. L. Wilbanks, the District Probation Officer and his successors to serve as Probation Officer herein. It is a further condition and term of this probation that the Defendant make monthly re-

ports, in writing and under oath, to the Probation Officer, beginning the 1st day of June, 1977, concerning his place of employment, wages earned, and concerning his compliance with all of the terms and conditions hereof, in such form as may be prescribed by the Probation Officer.

(l). That in any month in which he is unable to pay his probation fee, his proportionate part of his court costs, and his proportionate part of restitution, if any, he will file a written report with the District Probation Officer listing his income and expenses for said month.

(m). That he pay the fine of $2,000.00 assessed in the Judgment and Sentence of this date within the term of his probation.

(n). That he pay restitution to the injured party in an amount to be determined by the probation officer within six months of this date.

And it is further ordered that the said Defendant be and he is hereby released from custody, upon his personal recognizance in the sum of $1,000.00 dollars, conditioned for his faithful obedience to the terms and provisions contained herein.

/s/ Richard N. Countiss
Judge Presiding

IN THE DISTRICT COURT OF
OCHILTREE COUNTY, TEXAS
84TH JUDICIAL DISTRICT

No. 1494

THE STATE OF TEXAS

vs.

DANNY VINCENT

MOTION FOR WARRANT AND
TO REVOKE PROBATION

TO THE SAID HONORABLE COURT:

Now comes the State of Texas, by and through her District Attorney, joined by the Probation Officer herein, and respectfully shows to the Court that the above named Defendant, who was heretofore, on the 23rd day of May, 1977, duly convicted in the above entitled and numbered cause, of the offense of BURGLARY, and who was, on said date, placed on Probation by the Court for a term of Six years, has, since his conviction, and during the term of his said Probation, violated the terms thereof, in the following particulars:

1. He has violated Article A of his probation judgment, as ordered by the court, in that on or about September 28, 1977 in the City of Perryton, Ochiltree County, Texas, he committed the offense of Criminal Trespass.

2. He has violated Article A of his probation judgment, as ordered by the court, in that on or about September 28, 1977 in the City of Perryton, Ochiltree County, Texas, he committed the offense of Possession of Marihuana of less than Four (4) ounces.

WHEREFORE, the State prays that a Warrant issue for the Arrest of the said Defendant, DANNY VIN-

CENT; that the Probation heretofore granted to the said Defendant be revoked by the Court, and that the sentence of the law be pronounced against the Defendant, as provided by law.

/s/ [Illegible]
District Attorney
84th Judicial District

/s/ H. L. Wilbanks
Probation Officer
84th Judicial District

IN THE 84TH JUDICIAL DISTRICT COURT OF OCHILTREE COUNTY, TEXAS

No. 1494

THE STATE OF TEXAS

vs.

DANNY VINCENT

MOTION

To said Honorable Court:

Comes now Danny Vincent, defendant in this case and moves the court to release defendant from jail. As a condition of release, defendant agrees to abide by all of the terms and conditions of probation previously imposed in this case and agrees to abide by the following additional terms and conditions:

1. Defendant will report to the 84th. Judicial District Probation Officer once a week from this date until given permission to do otherwise.

2. Defendant will not associate with anyone known to use or to have used drugs of any type.

3. Defendant will submit himself to the court, at such time as the court may designate for a hearing on the states motion to revoke probation.

Respectfully submitted this 18th day of October, 1977.

/s/ Danny D. Vincent

Defendant

_____

Attorney for Defendant

IN THE 84TH JUDICIAL DISTRICT
COURT OF OCHILTREE COUNTY, TEXAS

ORDER—Filed Oct. 18, 1977

The foregoing motion for release from jail was this day considered by the court, and the court finds that said motion should be granted.

It is therefore ordered that defendant be released from jail, on his own recognizance. It is further ordered that defendant comply with all the terms and conditions of probation as previously imposed and comply with the following additional terms and conditions of probation:

1. Defendant will report to the 84th. Judicial District Probation Officer once a week from this date until given permission to do otherwise.

2. Defendant will not associate with anyone known to use or to have used drugs of any type.

3. Defendant will submit himself to the court, at such time as the court may designate for a hearing on the states motion to revoke probation.

Entered this 18th day of October, 1977.

/s/ Richard N. Countiss
RICHARD N. COUNTISS
Judge Presiding

IN THE DISTRICT COURT OF
OCHILTREE COUNTY, TEXAS
84TH JUDICIAL DISTRICT

No. 1494

THE STATE OF TEXAS

vs.

DANNY VINCENT

SUPPLEMENTARY MOTION FOR WARRANT
AND TO REVOKE PROBATION

TO THE SAID HONORABLE COURT:

Now comes the State of Texas, by and through her District Attorney, joined by the Probation Officer herein, and respectfully shows to the Court that the above named Defendant, who was heretofore, on the 23rd day of May, 1977, duly convicted in the above entitled and numbered cause, of the offense of BURGLARY, and who was, on said date, placed on Probation by the Court for a term of Six years, has, since his conviction, and during the term of his said Probation, violated the terms thereof, in the following particulars:

1. He has violated Article A of his probation judgment, as ordered by the Court, in that on or about February 4, 1978 in the City of Perryton, Ochiltree County, Texas, he committed the offense of Driving While Intoxicated.

2. He has violated Article H of his probation judgment, as ordered by the Court, in that on or about February 4, 1978 he failed to refrain absolutely from drinking intoxicants in all forms.

3. He has violated Article J of his probation judgment, as ordered by the Court, in that he has failed to pay a regular probation fee of $10.00 per

month through the probation office for the months of January and February, 1978, and is now in arrears the sum of $20.00.

4. He has violated Article K of his probation judgment, as ordered by the Court, in that he has failed to make monthly reports in writing under oath to the Probation Officer for the Month of January, 1978.

WHEREFORE, the State prays that a Warrant issue for the Arrest of the said Defendant, DANNY VINCENT; that the Probation heretofore granted to the said Defendant be revoked by the Court, and that the sentence of the law be pronounced against the Defendant, as provided by law.

/s/ William L. Rivers
Ochiltree County Attorney
84th Judicial District

/s/ H. L. Wilbanks
Probation Officer
84th Judicial District

IN THE DISTRICT COURT OF
OCHILTREE COUNTY, TEXAS
84TH JUDICIAL DISTRICT

No. 1494 (Criminal)

THE STATE OF TEXAS

vs.

DANNY VINCENT

ORDER FOR WARRANT

On this the 4th day of February, 1978, come on to be considered the State's MOTION FOR WARRANT AND TO REVOKE PROBATION filed herein, alleging that the Defendant herein is in violation of his probation, granted by the Court on the 23rd day of May, 1977; and the Court having read and considered the said Motion, and having heard and considered the evidence offered by the State in support thereof, and the Court being of the opinion that a Warrant should be issued for the arrest of the said Defendant, with the view that he be brought before the Court for hearing upon the State's Motion to Revoke Probation:

IT IS THEREFORE ACCORDINGLY ORDERED on this same day that the Clerk of this Court issue a warrant for the arrest of the said Defendant, DANNY VINCENT, commanding that he be brought before this Court INSTANTER, to answer the State of Texas for an offense against the laws of Texas, to-wit, BURGLARY, upon the State's Motion to Revoke Probation.

/s/ Richard N. Countiss
Judge Presiding

THE STATE OF TEXAS

TO THE PROBATION OFFICER,
SHERIFF OR ANY CONSTABLE OF
OCHILTREE COUNTY, TEXAS

GREETINGS:

WHEREAS, on the 23rd day of May, 1977, in cause No. 1494 on the Criminal Docket of the District Court of Ochiltree County, Texas, entitled THE STATE OF TEXAS VS. DANNY VINCENT the Defendant, Danny Vincent was duly and legally convicted of the offense of BURGLARY and was placed upon Probation for a term of (6) Six years;

AND WHEREAS, on the 6th day of February, 1978, the State filed herein its certain MOTION FOR WARRANT AND TO REVOKE PROBATION.

AND WHEREAS, pursuant to said Motion, the Honorable District Court of Ochiltree County, Texas, did make and enter its certain ORDER FOR WARRANT, under date of February 6, 1978, directing the Clerk of said Court to issue a Warrant for the arrest of the said Defendant, INSTANTER:

NOW THEREFORE, YOU ARE COMMANDED to take the body of the said Defendant and bring him before the Honorable District Court of Ochiltree County, Texas, at the Courthouse in Perryton, Texas, INSTANTER, then and there to answer the STATE OF TEXAS for an offense against the laws of said State, to-wit, Burglary upon the State's Motion to Revoke Probation on file in said cause.

HEREIN FAIL NOT, but have you then and there, before said Court, this writ with your return endorsed thereon showing how you have executed the same.

WITNESS MY HAND AND SEAL OF OFFICE, in Perryton, Texas, on this the 6th day of February, A.D. 1978.

/s/ Nora Taliaferra
Clerk, District Court
Ochiltree County, Texas

By _____
Deputy

WARRANT OF ARREST
INSTANTER

No. 1494

THE STATE OF TEXAS

vs.

DANNY VINCENT

/s/ Nora Taliaferra

Issued February 6, 1978

Clerk District Court
Ochiltree County, Texas

By _____ Deputy

[Filed Clerk Dist. Court Ochiltree Co., Tex.
4:20 O'Clock PM—Feb. 6, 1978]

/s/ Nora Taliaferra
By /s/ Nora Taliaferra

OFFICER'S RETURN

Came to hand the 6th day of February 1978, at 2:30 o'clock P.M., and executed on the 6th day of February 1978, at 4:15 o'clock P.M., by arresting the within named Danny Vincent at Perryton in Ochiltree County, and * placing him in jail at Ochiltree County Jail.

I actually and necessarily traveled 2 miles in the service of this writ, in addition to any other mileage I may have traveled in the service of other process in this cause during the same trip.

FEES—Making Arrest ..... $ _____
Mileage ..... _____
_____
_____
_____
Total ..... $ _____

* Erase according to facts.

/s/ H. L. Wilbanks
Probation Officer
_____ County, Texas

By _____ Deputy

IN THE 84TH JUDICIAL DISTRICT COURT
IN AND FOR OCHILTREE COUNTY, TEXAS

No. 1494

THE STATE OF TEXAS

vs.

DANNY DWANE VINCENT

ORDER SETTING DATE FOR HEARING

On this the 6th day of FEBRUARY, 1978, motion to revoke probated sentence of DANNY DWANE VINCENT, defendant in the above entitled and numbered cause, having been presented to the court by William L. Rivers, Ochiltree County Attorney, and the same having been considered by the court;

It is therefore ORDERED, ADJUDGED and DECREED by the Court that DANNY DWANE VINCENT appear before this Court on the 27th day of MARCH, 1978, at 10:00, A.M., on the said date, in the regular Courtroom of the Courthouse in Ochiltree County, Texas, to show cause, if any he have, why probation should not be revoked in this cause.

It is further ORDERED, ADJUDGED and DECREED by the Court that the Clerk of the District Court of Ochiltree County, Texas, shall attach to said notice a certified copy of the motion presented to said court by William L. Rivers, Ochiltree County Attorney, and filed herein, to be served upon the said DANNY DWANE VINCENT.

/s/ Richard N. Countiss
Judge Presiding

Filed 3-2-1978

IN THE 84TH JUDICIAL DISTRICT COURT
IN AND FOR OCHILTREE COUNTY, TEXAS

No. 1494

THE STATE OF TEXAS

vs.

DANNY DWANE VINCENT

NOTICE OF HEARING

To: DANNY DWANE VINCENT, GREETINGS:

You are hereby commanded to be and appear before the Honorable Richard N. Countiss, District Judge of the 84th Judicial District Court of Ochiltree County, Texas, at the Courthouse in Perryton, Texas, on the 27th day of March, 1978, at 10:00 A.M., then and there to show cause, if any, why probation should not be revoked in this cause, as prayed for in the State's Motion to Revoke Probated Sentence, a certified copy of which motion is attached hereto and made a part of this notice.

You are informed that you have the right to be represented by an attorney of your choice at such hearing, to cross examine witnesses for the State of Texas and to offer evidence in your behalf.

And whereas the Judge of said Court has made this Fiat, as follows:

A certified copy of the Judge's Fiat setting date for hearing is attached hereto and made a part of this return.

Herein fail not, but of this writ, and how you have executed the same, made due return.

Witness: Nora Taliaferro, Clerk of the District Court of Ochiltree County, Texas.

Given under my hand and seal of office at Perryton this the 2nd day of March, 1978.

Clerk,
Ochiltree County Court
Ochiltree County, Texas

SHERIFF'S RETURN

Came to hand on the 2 day of March, 1978, and executed on the 2 day of March, 1978, by delivering to DANNY DWANE VINCENT, the within named defendant, in person, a true copy of this notice, together with the accompanying true and correct and certified copy of State's Motion to Revoke Probated Sentence and the Court's Fiat therein setting date for hearing.

JIMMIE D. RHOADES
Sheriff,
Ochiltree County, Texas

By /s/ Gwen McKnight,
Deputy

IN THE DISTRICT COURT FOR THE
84TH JUDICIAL DISTRICT
OCHILTREE COUNTY, TEXAS

No. 1494

THE STATE OF TEXAS

vs.

DANNY VINCENT

STATE'S AMENDED SUPPLEMENTARY MOTION TO REVOKE PROBATION—Filed March 31, 1978

TO THE SAID HONORABLE COURT:

Now comes the State of Texas, by and through her Ochiltree County Attorney, joined by the Probation Officer herein, and respectfully shows to the Court that the above named Defendant, who was heretofore, on the 23rd day of May, 1977, duly convicted in the above entitled and numbered cause, of the offense of BURGLARY and who was, on said date, placed on Probation by the Court for a term of Six (6) years, has, since his conviction, and during the term of his said Probation, violated the terms thereof, in the following particulars:

(1) He has violated Article A of his probation judgment, as ordered by the Court, in that on or about February 4, 1978, in the City of Perryton, County of Ochiltree, he committed the offense of Driving While Intoxicated, an offense against the laws of the State of Texas; to-wit: Vernon's Annotated Civil Statutes, Article 67 01 l-1, in that the said Defendant on or about February 4, 1978, in the City of Perryton, Ochiltree County, Texas, did then and there operate a motor vehicle upon a public street within the incorporated City of Perryton, County of Ochiltree, State of Texas, while said Defend-

ant was intoxicated or under the influence of intoxicating liquor.

(2) He has violated Article H of his probation judgment, as ordered by the Court, in that on or about February 4, 1978, he failed to refrain absolutely from drinking intoxicants in all forms.

(3) He has violated Article J of his probation judgment, as ordered by the Court, in that he has failed to pay a regular probation fee of $10.00 per month through the probation office for the months of January and February, 1978, and is now in arrears the sum of $20.00.

(4) He has violated Article K of his probation judgment, as ordered by the Court, in that he has failed to make monthly reports in writing under oath to the Probation Officer for the Month of January, 1978.

WHEREFORE, the State prays that a Warrant issue for the Arrest of the said Defendant, Danny Vincent; that the Probation heretofore granted to the said Defendant be revoked by the Court, and that the sentence of the law be pronounced against the Defendant, as provided by law.

/s/ William L. Rivers
WILLIAM L. RIVERS
Ochiltree County Attorney

/s/ [Illegible]
Asst. Probation Officer
84th Judicial District

IN THE DISTRICT COURT FOR THE
84TH JUDICIAL DISTRICT
OCHILTREE COUNTY, TEXAS

No. 1494

THE STATE OF TEXAS

vs.

DANNY VINCENT

REVOCATION OF PROBATION

On the 23rd day of May, 1977, Defendant was duly and legally convicted of the offense of Burglary in the above entitled and numbered cause and punishment was assessed at Six (6) years confinement in the Texas Department of Corrections, and the imposition of sentence was suspended during the good behavior of Defendant, and the Defendant was placed on probation for a period of Six (6) years upon the following terms and conditions, to-wit: that during the term of probation the Defendant shall:

(a) That he commit no offense against the laws of this or any other State or of the United States.

(b) That he avoid injurious or vicious habits.

(c) That he avoid persons or places of disreputable or harmful character.

(d) That he become personally acquainted with the clergyman of some church of his choice and that he attend church services as often as his employment permits.

(e) That he work faithfully at suitable employment as far as possible, and support his dependents.

(f) That he remain within the confines of Ochiltree County, Texas, until, and unless, his probations

officer shall give him written permission to leave the county temporarily or to reside elsewhere.

(g) That he permit the probation officer to visit him at his home or elsewhere, as said probation officer may desire.

(h) That he refrain absolutely from drinking intoxicants in all forms.

(i) That he pay the costs of Court, through the Probation Officer, within 90 days after the date of judgment.

(j) That he pay a regular probation fee of $10.00 per month, through the Probation Officer, for the use and benefit of this county, beginning the 1st day of June, 1977.

(k) That the court hereby appoints and designates H. L. Wilbanks, the District Probation Officer and his successors to serve as Probation Officer herein. It is a further condition and term of this probation that the Defendant make monthly reports, in writing and under oath, to the Probation Officer, beginning the 1st day of June, 1977, concerning his place of employment, wages earned, and concerning his compliance with all of the terms and conditions hereof, in such form as may be prescribed by the Probation Officer.

(l) That in any month in which he is unable to pay his probation fee, his proportionate part of his court costs, and his proportionate part of restitution, if any, he will file a written report with the District Probation Officer listing his income and expenses for said month.

(m) That he pay the fine of $2,000.00 assessed in the Judgment and Sentence of this date within the term of his probation.

(n) That he pay restitution to the injured party in an amount to be determined by the Probation Officer within six (6) months of this date.

On the 6th day of February, 1978, the County Attorney of Ochiltree County, Texas, together with the Probation Officer of the 84th Judicial District filed a Supplementary Motion for Warrant and to revoke probation, setting out the respects in which the Defendant had violated the conditions of probation, and on the 31st day of March, 1978, the County Attorney of Ochiltree County, Texas, together with the Probation Officer of the 84th Judicial District, filed its Amended Supplementary Motion to Revoke further defining the respects in which the Defendant had violated the conditions of probation, to-wit:

> (1) He has violated Article A of his probation judgment, as ordered by the court, in that on or about February 4, 1978, in the City of Perryton, County of Ochiltree, he committed the offense of Driving While Intoxicated, an offense against the laws of the State of Texas; to-wit: Vernon's Annotated Civil Structures, Article 67 01 L-1, in that the said Defendant on or about February 4, 1978, in the City of Perryton, Ochiltree County, Texas, did then and there operate a motor vehicle upon a public street within the incorporated City of Perryton, County of Ochiltree, State of Texas, while said Defendant was intoxicated or under the influence of intoxicating liquor.
>
> (2) He has violated Article H of his probation judgment, as ordered by the Court, in that on or about February 4, 1978, he failed to refrain absolutely from drinking intoxicants in all forms.
>
> (3) He has violated Article J of his probation judgment, as ordered by the Court, in that he has failed to pay a regular probation fee of $10.00 per month through the probation office for the months of January and February, 1978, and is now in arrears the sum of $20.00.
>
> (4) He has violated Article K of his probation judgment, as ordered by the Court, in that he has failed to make monthly reports in writing under oath to

the Probation Officer for the month of January, 1978.

On the 10th day of April, 1978, the Defendant appeared in open Court in person, his Attorney, Robert D. McCutcheon, also being present, and the State appeared by her County Attorney and the Probation Officer of said Court, and after examining said written report and hearing the evidence offered by both the State and Defendant, the Court is of the opinion that the Defendant, Danny Vincent, violated the terms and conditions of his probation in the following respects:

(1) That he violated Article A of his probation judgment, in that on or about February 4, 1978, in the City of Perryton, County of Ochiltree, he committed the offense of driving while intoxicated, an offense against the laws of the State of Texas, to-wit: Vernon's Annotated Civil Statutes, Article 67 01 L-1.

(2) He has violated Article H of his probation judgment, in that on or about February 4, 1978, he failed to refrain absolutely from drinking intoxicants of all forms.

It is therefore ORDERED, ADJUDGED and DECREED by the Court that the Order suspending the imposition of the sentence, and placing Defendant on probation, heretofore entered in this said cause be, and the same is hereby revoked. Said Defendant is hereby continued on the same bond previously set in this cause pending further orders of this Court.

ENTERED THIS 1st DAY OF June, 1978.

/s/ Richard N. Countiss
Judge Presiding

Filed June 5, 1978 2:45 PM

IN THE DISTRICT COURT OF
OCHILTREE COUNTY, TEXAS
84TH JUDICIAL DISTRICT

APRIL TERM, 1978

Date: July 10, 1978

No. 1494

THE STATE OF TEXAS

vs.

DANNY VINCENT

SENTENCE (After Probation Revoked)

This day, this cause being again called, the State appeared by her District Attorney, and the Defendant, DANNY VINCENT, who was heretofore granted probation under the terms and conditions of the Judgment made and entered herein on the 23rd day of May, 1977, and whose said probation was revoked by order of this Court on the 10th day of April, 1978, was brought into open court in person, in charge of the Sheriff, for the purpose of having the sentence of the law pronounced against him in accordance with the Judgment herein rendered and entered against him, as aforesaid. And thereupon the said Defendant, together with his counsel, the Honorable John Irwin, both being present in open court, waived the time allowed by law after revocation of probation and prior to the pronouncement of sentence, and requested the Court to pronounce sentence herein immediately. And thereupon the said Defendant was asked by the Court whether he had anything to say why sentence of the law should not be pronounced against him and he answered nothing in bar thereof. Whereupon the Court proceeded, in the presence of said Defendant, his counsel also being present in open court as aforesaid, to pronounce sentence against him as follows:

IT IS THE ORDER OF THE COURT that the said Defendant, who has been adjudged to be Guilty of the offense of Burglary and whose punishment has been adjudged at confinement in the penitentiary for a term of Six (6) years, be delivered by the Sheriff of this County immediately to the Director of Corrections of the Texas Department of Corrections, or other person legally authorized to receive such convicts, and the said Defendant shall be confined in the State Penitentiary for a term not less than 2 years nor more than 6 years in accordance with the provisions of law governing the penitentiaries and the Texas Department of Corrections.

The said Defendant is allowed ——— days credit upon this sentence for time spent in jail since the time of his arrest and confinement herein.

And the said Defendant is hereby remanded to jail until the said Sheriff can obey the directions of this sentence.

/s/ Richard N. Countiss
Judge Presiding

Filed July 11, 1978

IN THE DISTRICT COURT FOR THE
84TH JUDICIAL DISTRICT
OCHILTREE COUNTY, TEXAS

No. 1494

THE STATE OF TEXAS

vs.

DANNY VINCENT

NOTICE OF APPEAL—July 13, 1978

Defendant, DANNY VINCENT, hereby gives notice of his intent to appeal from the revocation of his probation in the above styled case, and the sentence thereon rendered against him on July 10, 1978 to the Court of Criminal Appeals for the State of Texas.

LEMON, CLOSE, ATKINSON,
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Attorneys for Defendant

/s/ Robert D. McCutcheon
Of Counsel

CERTIFICATE OF SERVICE (omitted in printing)

IN THE DISTRICT COURT FOR THE
84TH JUDICIAL DISTRICT
OCHILTREE COUNTY, TEXAS

No. 1494

THE STATE OF TEXAS

vs.

DANNY VINCENT

DESIGNATION OF MATERIAL FOR INCLUSION IN THE RECORD—Sept. 7, 1978

Defendant, DANNY VINCENT, hereby specifies the following matter for inclusion in the record on appeal pursuant to the provisions of Article 40.09(2) of the Code of Criminal Procedure.

1. Judgment (Probation) dated May 23, 1977
2. Judgment dated May 23, 1977
3. Sentence dated May 23, 1977
4. Motion for Warrant and to Revoke Probation
5. Order for Warrant dated September 30, 1977
6. Motion and Order dated October 18, 1977
7. Supplementary Motion for Warrant and to Revoke Probation
8. Order for Warrant dated February 4, 1978
9. Warrant dated February 6, 1978 with Officer's Return
10. Order Setting Date for Hearing dated February 6, 1978
11. Notice of Hearing, dated March 2, 1978 and Sheriff's Return
12. Defendants Motion to Quash and Special Exceptions
13. Order Overruling in Part and Sustaining in Part

14. States Amended Supplementary Motion to Revoke
15. Order Appointing Counsel dated March 20, 1978
16. Order Appointing Counsel dated March 24, 1978
17. Order of Revocation of Probation dated May 23, 1978
18. Order Appointing Counsel dated July 10, 1978
19. Sentence dated July 10, 1978
20. Order Setting Appeal Bond dated July 10, 1978
21. Notice of Appeal
22. Statement of Facts

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Attorneys for Defendant

/s/ Robert D. McCutcheon
Of Counsel

CERTIFICATE OF SERVICE (omitted in printing)

IN THE 84TH DISTRICT COURT
OCHILTREE COUNTY, TEXAS

OCTOBER TERM, 1978

_____, 1979

No. 1494

THE STATE OF TEXAS

vs.

DANNY VINCENT

FINAL ORDER OF THE COURT OF APPEALS

BE IT REMEMBERED that on this the 15th day of January, A. D. 1979, the Court had before it the Record on Appeal in the above styled and numbered cause and the Court having described from the record, refused to grant a New Trial herein.

IT IS THEREFORE ORDERED that the Clerk of the Court shall promptly transmit the record to the Court of Criminal Appeals at Austin, Texas.

/s/ Richard N. Countiss
Judge

OPINION OF THE TEXAS COURT OF CRIMINAL APPEALS

OPINION

On May 23, 1977, the appellant pleaded guilty to burglary and was granted six years' probation. On April 10, 1978, his probation was revoked.

On appeal from the revocation of probation, the appellant sets forth two grounds of error. Both grounds complain of the "failure" of the Texas system of probation to provide a preliminary hearing of the kind discussed in Gagnon v. Scarpelli, 411 U.S. 778 (1973). This argument was rejected in Whisenant v. State, 557 S.W.2d 102 (Tex.Cr.App. 1977), and it does not require further discussion today.

The judgment is affirmed.

PER CURIAM OPINION
586 S.W.2d 880

DELIVERED: September 19, 1979

By: Panel No. 2, 1st Quarter, 1979

COMPOSED OF: Leon Douglas, Judge
Truman Roberts, Judge
Wendell Odom, Judge

SUPREME COURT OF THE UNITED STATES

No. 79-5962

DANNY VINCENT, APPELLANT,

v.

TEXAS

ON CONSIDERATION of the motion of appellant for leave to proceed *in forma pauperis*,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

April 14, 1980

SUPREME COURT OF THE UNITED STATES

No. 79-5962

DANNY VINCENT, APPELLANT,

v.

TEXAS

APPEAL FROM THE COURT OF CRIMINAL APPEALS OF TEXAS

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits.

April 14, 1980

☆ U. S. GOVERNMENT PRINTING OFFICE: 1980 321053 331